IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CONSOLIDATED MUTUAL OIL COMPANY, a corporation, and J. M. McLEOD, *Appellants,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	No. 2787.
CONSOLIDATED MUTUAL OIL COMPANY, a corporation, and J. M. McLEOD, *Appellants,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	No. 2788.
NORTH AMERICAN OIL CONSOLIDATED, a corporation, et al., *Appellants,* vs. THE UNITED STATES OF AMERICA, *Appellee.*	No. 2789.

REPLY BRIEF FOR THE UNITED STATES OF AMERICA.

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REPLY BRIEF FOR THE UNITED STATES OF AMERICA.

This reply brief is filed in answer to the contentions of counsel for the Appellants embodied in the brief entitled, "Some Suggestions on the Opinion in United States vs. Stockton Midway Oil Com-

pany, delivered by Hon. B. F. Bledsoe" and filed in causes Nos. 2787, 2788 and 2789; and the brief entitled, "Supplemental Brief Addressed to the Point That Appellants Are Entitled to a Patent Under the Act of March 2, 1911," and filed in cause No. 2789. The questions will be discussed in the order just enumerated.

I.

Reply to "Some Suggestions on the Opinion in United States vs. Stockton Midway Oil Company, Delivered by Hon. B. F. Bledsoe."

The criticism now made of the opinion of Judge Bledsoe is, in substance, a repetition of the argument presented upon the hearing of that case. A sufficient answer thereto is found in the opinion itself, which follows:

> This is an application by the plaintiff for an injunction in restraint of waste and for the appointment of a receiver for oil property claimed by the government in its proprietary capacity, and now in the possession of and being operated for the production of oil by defendants.
>
> The case is a so-called "withdrawal suit" and in its substantial features is of the form, scope and purpose of cases heretofore considered and reported. (*United States* vs. *McCutchen et al.,* 234 Fed. 702; same case on final hearing,— Fed. —; also *United States* vs. *Midway Northern Oil Co.,* 232 Fed. 619, heretofore heard and determined by Judge Bean sitting in this court.)
>
> The facts of the case present no conflict. Substantially they are as follows:
>
> The land in dispute is the southeast quarter of Section 14, Township 31 South, Range 22 East,

Mount Diablo Meridian, in the State of California. All of the four quarters of the section named were located as four placer claims at the same time and by the same persons, and of course are contiguous. Each quarter section later passed into the possession of the Bear Creek Oil and Mining Company, under which the General Petroleum Company now claims, for development purposes; previously to production of oil upon the land, it was what is known as "wild cat" territory in that it was not known to contain oil, and was not near enough to an oil territory to make the existence of oil therein reasonably probable, although its relation to other oil lands, and its geological characteristics were such as to suggest the possibility that it contained oil. The Bear Creek Oil Company concluded to explore the land for oil and in pursuance of that purpose entered into a contract with the original locators which contained the following among other stipulations:

"In consideration of said covenants on the part of the party of the first part, the party of the second part hereby agrees that it will, within twenty days after the date hereof, commence the erection on each three quarters in said section of buildings sufficient and suitable to carry on the business of drilling for oil, and an oil drilling derrick. On the remaining quarter, to complete a standard drilling rig and as soon as practical thereafter to commence the actual work of drilling the well and continuing the same with reasonable diligence *until success or abandonment, that is to say, until the territory shall have been tested for petroleum oil.* (Italics supplied.)

"After the completion of a well on the first quarter producing oil in paying quantities, the said party of the second part agrees to commence a well on one of the remaining quarter sections, and after oil shall have been discovered on the

second quarter in paying quantities, work will be commenced and prosecuted in a similar manner on each of the third and fourth quarters successively."

Pursuant to this contract the Bear Creek Oil and Mining Company established a camp at the center of the section and erected a building or buildings on each of the four quarter sections, which were thereafter continuously occupied by its employees; a water line was run, a water tank was established on one of the quarters, a road was made, and a skeleton derrick was erected on each quarter. These improvements were made in the spring of 1909, and completed some time in June of that year.

Work on the drilling of a well on the southwest quarter and near the center of the section was begun in June, 1909, and continued until oil was discovered in the fall of 1909 and the well completed in February, 1910. The skeleton derrick on the southeast quarter, involved in this suit, was destroyed by wind in the fall of 1909, and another derrick was erected thereon during the winter following.

After the completion of the well on the southwest quarter, wells were drilled consecutively on the northwest, northeast and southeast quarters, the one on the southeast, the last to be drilled, having been spudded in in May, 1910, and later oil was discovered on that tract. On December 15, 1909, an affidavit as to the work theretofore done on the southeast quarter was filed, which said affidavit purported to recite the doing of so-called assessment work upon the claims during the year 1909 in a sum considerably in excess of the statutory requirements. Said affidavit also recited that such expenditures were made for the purpose of holding said claim, and also recited that, in addition to the labor done on said claim, the Bear Creek Oil and Mining Company was

the owner of the four claims heretofore referred to, covering the four quarters of the section above mentioned; that they lay in a contiguous compact group, and that the labor done and improvements placed upon any one of said claims tended to and did develop and determine the oil-bearing character of said contiguous claims and of each of them. Also, that upon said group of claims the owner had performed labor and made improvements of the value of not less than $20,000.00, etc.

The lands in question were withdrawn from appropriation under the mineral land laws of the United States by the Executive withdrawal of September 27th, 1909. (See *U. S.* vs. *Midwest Oil Co.,* 236 U. S. 459.)

Up to the time the lands in controversy were withdrawn from appropriation, no "discovery" of any mineral had been made. The claim had been "located", that is, appropriate monuments and mineral location notice had been set up, but the *sine qua non* of a valid mineral claim, viz.: the discovery of mineral within the limits of the claim had not been accomplished. The locators, then, were in the position referred to and commented upon in *McLemore* vs. *Express Oil Co.,* 158 Cal. 559; 112 Pac. 59; they had acquired no permanent vested rights of any character, and in virtue of their location and occupancy of the claims had acquired merely the limited right, as against all persons save the government at least (*McLemore* vs. *Express Oil Co., Supra*) unhindered, to engage diligently in the prosecution of work leading to a discovery of oil or other mineral content within the boundaries of the claim located.

As I was led to conclude in the McCutchen case, on application for a receiver, *supra,* the withdrawal order itself, by its terms, recognized and sought to protect this substantial though lim-

ited right. Express Congressional recognition of it was accorded in the Pickett Act (36 Stat. 847), which while neither acknowledging nor repudiating the validity of the withdrawal order, limited the extent to which such order might otherwise go, if valid, by protecting from withdrawal those who were at the date of withdrawal, "in the diligent prosecution of work leading to the discovery of oil or gas." In other words, by this Act Congress sought to give oil locators before discovery the same rights as against the government that judicial decisions had given them as against third persons. There is no inference to be drawn, however, that Congress, *legislating as it then was as to withdrawals and in aid of the proprietary rights of the government,* was intending to confer any additional rights, particularly as against the government, upon those claiming, without a discovery, land withdrawn by competent authority. The net result of the situation, then, was, that upon the withdrawal of the land embraced within his claim, *in the absence of a discovery,* a claimant possessed no rights at all, as against the government, save the right, if he were then actually engaged in the diligent prosecution of work leading to a discovery of oil or gas on such claim, to "continue in diligent prosecution" of such work until a discovery, as a result of such continued diligent prosecution, had been effected. By that event, of course, and not till then, his immunity as against attack by the government in its proprietary capacity would be complete. Previously to such event, and in the absence of the required diligent prosecution of work, he has no defense to the government's claims.

Confessedly, at the date of the Executive withdrawal order in 1909, no work of any kind, diligent or otherwise, *leading to a discovery of oil in the southeast quarter of Section 14,* was in progress. Diligent work, pursuant to the con-

tract hereinabove referred to, was in progress on the southwest quarter, but the most that work could "lead" to, as in fact all it did "lead" to, was a discovery with respect to the claim on such southwest quarter. A discovery of oil on the southwest quarter, no matter how persuasive as to the presence of oil in, could not validate the location on, the southeast quarter. (*Nevada Sierra Oil Co* vs. *Nome Oil Co.,* 98 Fed. 673; *Olive Land & Development Co.* vs. *Olmstead,* 103 Fed. 568.) Defendants concede this, but claim (and this is the only question in the case) that the diligent prosecution of work at the time of withdrawal on the southwest quarter, under the so-called "group development" rule, sufficed to protect, until actual discovery, the other three claims in the group.

This "group development" theory is based upon a situation well known and recognized in the mining world, to the effect that annual assessment work, if otherwise sufficient in amount, done upon one of a group of contiguous claims and calculated to aid in the development of the mineral resources of the entire group, will be accepted by the government and will suffice to hold and protect all the claims constituting the group. (2324 Rev. Stat.; *Anvil Hydraulic Co.* vs. *Code,* 182 Fed. 205, where a very satisfactory statement of the rule may be found.) But the inherent and fundamental weakness of the defendant's contention in this regard is that the rule of "group development" both in the statute and in the decisions, relates only to subsisting mineral claims —i. e., claims upon or within which a discovery has been made. No case to which my attention has been called and no statute or regulation of which I have knowledge makes the group development rule applicable to any claims other than those upon which annual assessment work is due, viz., claims founded upon a discovery. Prior to discovery, "assessment work" will not suffice to

hold a claim, nor will it suffice to take the place of a discovery. In its legal effect, it is "irrelevant and immaterial." (*McLemore* vs. *Express Oil Co., Supra.*) Nor is the Pickett Act, expressly or impliedly, a recognition of the "group development theory," as suggested by counsel for defendant. As above indicated, the Act was passed because of, and with reference to, a controversy over the status of claims *where a discovery had not been made;* it had no concern with, and is not affected by, any regulation or statute respecting the continued holding of claims already *valid in law because a discovery therein had been made.*

Counsel's argument is based upon the fact that the language of the Pickett Act does not *in express terms* demand that the "diligent prosecution of work" shall be performed *upon the claims in question,* and that in consequence, and in light of the practice and decisions respecting the doing of annual assessment work upon claims held in groups, such practice and decisions are "to be read into" the Pickett Act, and "diligent prosecution of work" adjudged accordingly. The dissimilarity of the situations, however, makes inapposite the suggestion of reading the one law into the other. The one had to do with the holding of a claim valid in law; the other had to do with the initiating of such a claim. In addition, though it may not be so phrased in express terms, the clear inference to be drawn from the Pickett Act is that Congress intended that the work therein provided for should be done upon the precise land which might be the subject of a withdrawal order. Nothing in the Act serves to indicate any other intention; the language of the decisions furnishing the inspiration as well as the wording of the Act (*Miller* vs. *Chrisman,* 140 Cal. 440; *McLemore* vs. *Express Oil Co.,* 158 Cal. 559; *Borgwardt* vs. *McKittrick Oil Co.,* 164 Cal. 650), lends countenance to no such suggestion as

is advanced herein; and, finally, the language of the Act itself is inconsistent with such a conclusion. It provides, that if a *bona fide* occupant or claimant is in "diligent prosecution of work *leading* to the discovery of oil or gas" he shall not be affected by the withdrawal order. Obviously, the work which will avoid withdrawal must be work which, if persisted in, will "lead" to, i. e., bring about, a discovery of mineral upon the precise land withdrawn. No other land was in contemplation; on no other land could a discovery be made which would be productive of any mineral rights in or to the land withdrawn.

The argument is also advanced that, though Sec. 2325, Revised Statutes, permits the issuance of a patent as for mineral land only in case $500.00 worth of labor "upon the claim" has been performed, yet nevertheless the Land Department has consistently applied the "Group Development" rule to application for patent, and has in consequence directed issuance of patents where the work was not done "upon the claim" but only upon one of a group of claims. (Copper Glance Lode, 29 L. D. 542; Zephyr and other claims, 20 L. D., 510.) With this premise, the conclusion is urged that the ruling of the Court in its consideration of the Pickett Act should be along similar lines. Aside from the obvious fact that a different rule of construction might reasonably be followed as between Sec. 2325, in which the government is asserting and seeking to enforce no proprietary right, and the Pickett Act, in which such right is asserted and dealt with, it would seem to suffice to suggest that under Sec. 2324 of the Revised Statutes, where the group development rule received its first recognition, by the doing of assessment work pursuant to such rule, the one substantial right in connection with mineral land, viz., the right to hold and work the claims, even as against the government, was secured. Such being the case, it was perhaps not

improper, and in furtherance of the liberal construction of mining laws in aid of mineral development, that the Department should consider that a vested right even as against the government having been thus acquired, a patent which is merely evidentiary of that right should follow, even though express authorization of such patent, based upon group development work, was lacking in Sec. 2325. It might be that the Department was too liberal in its construction of Sec. 2325. However, nothing in aid of a proper construction of the Pickett Act where the rules are to be applied with strictness in favor of the government is to be gleaned, in my judgment, from the Department's construction of Sec. 2325.

The decision of Judge Riner of the District Court of Wyoming, in *United States* vs. *Ohio Oil Company,* not as yet reported, is cited in support of defendant's contention. True it is, in that case, that Judge Riner, apparently without giving consideration to the precise point involved herein, did hold that work done apparently on one or more claims for the benefit of several would redound to the benefit of the claimant and suffice, as against the provisions of the Pickett Act, to vest him with a valid title to the land as mineral land with respect to all of the claims. Preliminarily, it should be observed that with respect to the claims in question Judge Riner had found that a sufficient "discovery" in law had been made; for the holding of the claims thereafter, of course, the "group development" rule adverted to by Judge Riner was applicable and proper; moreover it is apparent from the facts in that case that the contract entered into previously to the withdrawal order provided for the drilling of wells "on these lands". It would seem therefore as if in that case there was a *positive agreement* to prosecute work by the drilling of wells *upon each one* of the claims in question; such might properly have been held by Judge

Riner to have been the diligent prosecution of work with respect to all of the claims at the time of the withdrawal order. In the case at bar, however, it is apparent from the terms of the contract entered into that in the event of the failure to discover oil on one of the claims, no wells would have been drilled upon the others; in consequence *there was no positive obligation* to do anything on the southeast quarter at the time the withdrawal order was promulgated; as a necessary result thereof, there was no diligent prosecution of work at the time with respect to such southeast quarter. Irrespective of what the conclusion may have been in the Ohio Oil case then, the case at bar is clearly differentiated from that case, and not within either the spirit or scope of its ruling.

In addition, it may be said that to hold that one may acquire rights as against the government, in the face of a withdrawal order, merely by holding the "group development" rule, prosecuting his work upon several claims in succession, but always one at a time, is to go counter to the holding in *Borgwordt* vs. *McKittrick Oil Co., supra.* There it was sought to engraft upon the rule requiring diligent prosecution of work leading to a discovery, the qualification that it might be engaged in within a "reasonable time" after location. This qualification was expressly repudiated by the Court, it being said (p. 661): "The rule declared by the decisions does not so provide. The attempting locator's possession is protected only while he may fairly be held to be actually engaged in such work as may reasonably be held to be discovery work." So here, if *actually engaging* in the diligent prosecution of work leading to discovery is essential, the putting off of that work with respect to one claim while another claim was being explored for purposes of discovery, would seem to be destructive of the right of the claimant to be protected in his

claims upon which no work was actually being done.

The lands in controversy having been withdrawn before discovery, and no diligent work leading to such discovery having been in progress at the date of withdrawal, it follows that defendants show no such right to the lands as to negative the probability of the government's success on final hearing.

The motion for injunction and Receiver applied for will therefore be granted. Counsel will draft appropriate decrees.

Counsel invoke the rule of *stare decisis* and say that Judge Bledsoe's opinion conflicts with the principle established by the decision in Copper Glance Lode, 29 L. D. 542, and preceding cases enunciating the same rule. The contention is based solely upon the same erroneous conception of the question involved. Judge Bledsoe very clearly points out the distinction between the points involved in the two cases. The Copper Glance Lode case raised the question as to whether development work done off of a claim already validated by requisite discovery, would support an application for patent. In that case the lands embraced within the claims and locations had been segregated from the public domain and a valid right thereto had become vested in the claimants by discovery. Claimants were seeking a patent under Sec. 2325 of the Revised Statutes, and not attempting to create a vested right under Sections 2319-20, which clearly say that there can be no valid claim without discovery within its own boundaries. In the cited case the doctrine of "group

development'' was invoked to perpetuate a claim already alive, while in the instant case they are attempting to call to their aid the same doctrine to create a claim, or right, which has no existence. Those situations are entirely different and the law governing the creation of a claim and the law perpetuating a valid claim are so dissimilar that the principles governing the former have no application to the latter. This distinction, we think, was clearly and conclusively pointed out by Judge Bledsoe, and needs no further comment.

Counsel criticize that portion of Judge Bledsoe's opinion wherein he distinguishes the case under consideration from the opinion of Judge Riner in the suit of the *United States* vs. *Grass Creek Oil and Gas Company,* and say that both Judge Riner and the Circuit Court of Appeals determined that the group development theory as urged by counsel in the instant case was approved. The opinion of the Circuit Court of Appeals is published in 236 Federal Reporter, page 481. A most casual examination of this opinion discloses that the Court of Appeals did not consider the group development theory in reaching its conclusion, but decided the case upon the evidence showing that prior to and after the withdrawal order there in question the claimants of the property and their predecessors in interest were in diligent prosecution of work leading to the discovery of oil upon each of the claims embracing the land in question. In reading this opinion it will be remembered that the withdrawal order there

under consideration was dated May 6, 1914. On page 485 of the Federal Reporter, the Circuit Court of Appeals said:

> "On the same day, May 5, 1914, Mr. McFadyen, for the Ohio Oil Company, entered into a verbal contract with Mr. Good at Thermopolis to drill wells *on these lands* and to proceed *at once*. Mr. Good shipped the drilling tools to the land on May 9, 1914, for the purpose of doing the work, and *continued uninterruptedly until October 1, 1914*. He began actual drilling operations on the northwest quarter on July 1, 1914, as soon as the drilling apparatus had been erected and was in working order, finishing the well on July 24, 1914, when, having drilled to a depth of 1047 feet, oil in commercial quantities was discovered. Actual drilling on the east half of the southwest quarter was begun by him on July 31, 1914, and continued until August 20, 1914, when oil was discovered in commercial quantities at the depth of 965 feet." (Italics supplied.)

The language of the Court just quoted leads to the irresistible conclusion that the court found from the evidence that Mr. Good shipped the drilling tools to the land on May 9th, 1914, for the purpose of *doing the work, and continued uninterruptedly until October 1st, 1914,* and not only was this uninterrupted work proceeding on the lands in controversy between May 9th, 1914, and October 1st, 1914, but actual drilling on the east half of the southwest quarter, the land then under discussion, was begun by him on July 31st, 1914. An examination of the facts as found by the Appellate Court in the Grass Creek Oil and Gas Company case discloses

that the court could not have been considering the group development theory, because it found that the work was going on continuously on each of the claims embraced in the lands in controversy. They were not seeking to apply the work done upon some other quarter section of land to the lands under consideration, and they did not find that work done upon some other quarter section of land was at all considered as work leading to the discovery of oil on the lands in controversy.

The language of the Court of Appeals above quoted necessarily impels the conclusion that during the period of time from May 9th, 1914, to July 31st, 1914, the actual work of erecting the drilling apparatus and getting it in working order was being carried on not only on the adjoining lands, but on both tracts of land involved in suit.

Another distinction which we wish to impress upon this Court is that in one of the cases at bar the record (Suit No. 2788, pages 90-96), discloses that the contract by which the drilling was to be done provided that the drilling should be commenced on the southwest quarter of the section which is not involved in suit. Under the contract there was no agreement to do drilling upon the lands in suit until after oil was discovered in paying quantities on the southwest quarter; whereas, in the Grass Creek Oil and Gas Company case, the Court found as a matter of fact that the contract entered into on the day prior to the order of the withdrawal

bound both the Ohio Oil Company and Mr. Good, the driller, to proceed expeditiously with the drilling upon each of the tracts involved. The language found on page 485 of the opinion, to wit: "To drill wells on these lands and to proceed at once," shows that the contractor was bound by his contract to drill wells upon every tract of land involved in that suit, and that the Ohio Oil Company was bound to pay for them, whereas in the case at bar we find that the contractor was only bound to drill upon the southwest quarter, and that the contract clearly evidenced the intention upon the part of defendants not to pursue their drilling on the lands involved in this suit, in the event that the well which was started on the southwest quarter of the section failed to disclose oil.

Some exception is also taken to the portion of the opinion under consideration where counsel attempt to point out the variance between the views of Judge Bledsoe and the views of the Attorney General and the Department of the Interior with respect to the place where the work in question may be done. By quoting only part of a sentence, counsel build up a man of straw, and say that Judge Bledsoe has determined that the work must be done "upon the precise land which might be subject to the withdrawal order." A fair reading and interpretation of the entire decision by Judge Bledsoe will disclose no such conclusion. It is apparent, when he used this language in a portion of one of his sentences, that he was indicating his opinion that

work which was done upon one tract of land and would only lead to the discovery of oil upon the particular tract upon which it was performed, could not be applied as work leading to the discovery of oil upon an entirely separate and distinct tract.

To illustrate the case at bar, Judge Bledsoe has said that the drilling of an oil well on the southwest quarter of the section could not be counted as work leading to the discovery of oil upon the southeast quarter of the section. He did not say that if the defendants in this case were in the actual work of laying a pipe line for the purpose of conducting water from the Stratton Water Company to the southeast quarter and had not yet arrived with that pipe line within the boundaries of the southeast quarter, that such work could not be counted diligent prosecution of work leading to the discovery of oil on the southeast quarter. The position taken by the Department and the Attorney General is that the drilling of an oil well on one quarter section of land was not work that was applicable to the other quarter, but that if a pipe line was being laid from a point without the boundaries of a quarter section of land to that particular quarter for the purpose of furnishing water with which to drill, that that work, even though without the boundaries of the particular lands, might be considered as work done upon that particular quarter, and a correct analysis of Judge Bledsoe's reasoning is not in conflict with this view.

II.

Reply to the Contention That Appellants Are Entitled to a Patent Under the Act of March 2, 1911.

This Court is asked to decide that the Act of March 2, 1911, by implication, repealed the provisions of the Pickett Act of June 25, 1910, in so far as the latter conferred rights upon those who were in the diligent prosecution of work leading to the discovery of oil or gas upon lands withdrawn from entry by the order of September 27, 1909, and, in effect, conferred rights upon those who were in the possession of land at the date of the withdrawal and had commenced some sort of development work thereon, providing such persons claimed said lands under an assignment and had made a discovery of oil or gas prior to the passage of the Act. To adopt such an interpretation would do great violence to the general mining laws as well as to the acts dealing solely with withdrawn oil lands. It is clear that the only class of claimants dealt with in the Act of March 2, 1911, are those to whom the lands applied for were transferred after the making of the paper locations and before the discovery of oil. The interpretation contended for does not authorize the patenting of lands to those who have not sold or transferred their rights in these so-called paper locations, but remands them to the continued diligence required by the Pickett Act. Neither does the Act, as counsel would have it interpreted, give any rights to assignees who had not discovered oil prior to the passage of the Act, even though they

had been diligent, for counsel would have its benefits limited to those "who shall have effected an actual discovery of oil or gas." The Act as thus applied would likewise dispense with the requirements of the general mining laws as to the quantity or value of the work required before patent and permit the issuance of a patent even though the discovery of oil or gas had been effected prior to March 2, 1911, by the expenditure of an amount of labor merely nominal in quantity or value.

The argument presented is most unique. By citation of authority they establish a rule of interpretation only invoked where light is sought upon extremely doubtful or ambiguous language, and then, boldly disregarding the rule, read into the body of the Act their own readjustment of the words of the title. We concede that in cases of extreme doubt or ambiguity courts will occasionally refer to the title of an act to determine the intent of the Legislature, but never to add to or take from the body of the statute. In counsel's argument they do not ask this Court to look to the title in order to determine the construction of the Act or the intent of Congress, but read into the Act words taken from the title for the purpose of giving to their clients a right admittedly not embraced within the body of the Act. The rule as to what bearing a title may have upon the body of the act has been well expressed by the Supreme Court in the case of *Hadden* vs. *Barney,* 72 U. S., 3 Wall., 107, as follows, pages 110, 111:

"The title of an act furnishes little aid in the

construction of its provisions. Originally in the English courts the title was held to be no part of the act; 'No more,' says Lord Holt, 'than the title of a book is part of the book.' *Mills* vs. *Wilkins,* 6 Mod. 62. It was generally framed by the clerk of the House of Parliament, where the act originated, and was intended only as a means of convenient reference. At the present day the title constitutes a part of the act, but it is still considered as only a formal part; it cannot be used to extend or to restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the legislature.

"These observations apply with special force to acts of Congress. Everyone who has had occasion to examine them has found the most incongruous provisions, having no reference to the matter specified in the title. Thus, the law regulating appeals, in Mexican land cases, to the district courts of the United States from the board of commissioners, created under the Act of March 3rd, 1851, is found in an Act entitled 'An Act Making Appropriations for the Civil and Diplomatic Expenses of the Government for the Year Ending June 30th, 1853, and for Other Purposes.' Act, June 30, 1853, ch. 108 (10 Stat. 98). The law declaring that in the courts of the United States there shall be no exclusion of any witness on account of color, nor in civil actions when he is a party to or interested in the issue tried, is contained in a proviso to a section in the appropriation act of 1864, the section itself directing an appropriation for detecting and punishing the counterfeiting of the securities and coin of the United States. Act, July 2, 1864, ch. 210 (13 Stat. 351).

"During the past session, whilst a bill was pending before Congress entitled 'A Bill Grant-

> ing the Right of Way to Ditch and Canal Owners over the Public Lands, and for Other Purposes,' all after the enacting clause was stricken out, and provisions establishing a complete system for the possession and sale of interests in mines were substituted in its place. And thus the most important act in our legislation relating to the mining interests of the country stands on the statute book under a title purporting that the act grants a right of way to ditch and canal owners over the public lands, and for other purposes. Act, July 6, 1866, ch. 262 (14 Stat. 251). The words 'for other purposes' frequently added to the title in acts of Congress are considered as covering every possible subject of legislation."

See also:

> *Church of the Holy Trinity* vs. *United States,* 143 U. S., 457, 462.

Looking to the language of the Act itself, it is clear that Congress had in mind but one right which it intended to confer upon one class of applicants for mining patents, namely, the right to a patent to mining land the title to which had been conveyed to the claimant by the original locator prior to the time that such location was validated by discovery. Such intention is, we submit, expressed in clear and concise language, for the Act declares its sole purpose to be "that in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas, solely because of any transfer or assignment thereof or of any interests or interest therein by the original lo-

cator or locators, or any of them, to any qualified persons or person, or corporation, prior to discovery of oil or gas therein."

Recourse is had to the so-called history of the proviso and its amendment to uphold the position that the Act was intended to relieve assignees of original locators from the provisions of the Pickett Act requiring diligent prosecution of work leading to the discovery of oil. An examination of this history discloses no such purpose. As the bill was presented in the House (C. R. (House) Vol. 46, Part 3, page 2094), the proviso read as follows:

> "*Provided, however,* That such lands were not at the time of entry into possession thereof covered by any withdrawal."

The proviso as finally enacted is as follows:

> "*Provided, however,* That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry."

The proviso was amended in the Senate and as there amended was finally passed. The debates in the House and Senate, as hereinafter set forth, disclose that the purpose of the amendment was primarily to cause the Act to affect only those lands withdrawn from "*mineral entry.*" The proviso as it passed the House originally affected lands that had been withdrawn from all forms of entry. Debate discloses that it was the intention of Congress to exclude from the effects of the Act those lands which

had been withdrawn and established into forest reservations and other reservations of that character. That such was the intention is clearly shown by the debate in the House. (C. R. (House), Vol. 46, Part 4, page 3618.) The correspondence between the Secretary of the Interior and the Senate Committee on Public Lands discloses no intention on the part of the former nor on the part of Congress to relieve claimants of withdrawn oil lands from the provisions of the Pickett Act.

The sole purpose in enacting this statute was to relieve assignees from the rule laid down by the Interior Department in the case of H. H. Yard, et al., 38 L. D., 59. Such purpose was expressly and repeatedly declared as the only purpose by the supporters of the bill in both the House and the Senate. We quote all of the debate in Congress as follows:

EXTRACT FROM CONGRESSIONAL RECORD—HOUSE.

61st Congress, Third Session.
Pages 2094 to 2097, inclusive.

TO PROTECT LOCATORS OF OIL AND GAS LANDS, ETC.

Mr. Smith of California: Mr. Speaker, I move to suspend the rules and pass the bill H. R. 32344.

The Speaker: The gentleman from California moves to suspend the rules and pass the bill indicated. The clerk will report the bill.

The clerk read as follows:

A bill (H. R. 32344) to protect the locators in good faith of oil and gas lands who shall have

effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

Be it enacted, etc., That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified persons or person, or to a corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor not exceeding 160 acres in any one claim shall issue to the holder or holders thereof, as in other cases: *Provided, however,* That such lands were not at the time of entry into possession thereof covered by any withdrawal.

The Speaker: The Chair understands the gentleman to move to agree to the amendment contained in the bill and to pass the bill as amended. Is a second demanded?

Mr. Mann: Mr. Speaker, I demand a second.

Mr. Smith of California: Mr. Speaker, I ask unanimous consent that a second may be considered as ordered.

The Speaker: Is there objection? (After a pause.) The Chair hears none. The gentleman from California (Mr. Smith) is entitled to 20 minutes and the gentleman from Illinois (Mr. Mann) to 20 minutes.

Mr. Smith of California: Mr. Speaker, I do not care to occupy the time in discussing the bill other than is stated in the report, unless there are questions which the gentleman desires to propound.

Mr. Mann: If the gentleman does not wish to occupy time in the discussion of the bill, neither do I.

Mr. Smith of California: Then, Mr. Speaker, I call for a vote.

Mr. James: I think the gentleman ought to explain the bill.

Mr. Mann: We can pass a pig in poke here, I believe, under suspension of the rules.

Mr. Smith of California: I thought perhaps the gentleman had read the report, which, I think, states the case fully. In a nutshell, the bill provides for the relief of those who made placer-mining entries, and conveyed them to a corporation or to another party before the discovery of the metal. Now, that practice was followed for a number of years and finally it was stated before the Interior Department, and upon a thorough and careful examination of the law the Interior Department was obliged to conclude that if the conveyance was made before discovery it conveyed nothing, and therefore the grantee had taken nothing from the grantor and could not proceed to patent. Now, the Department heartily recommends this relief for those who made these conveyances before the new ruling on the law.

Mr. James: Will the gentleman permit a question?

Mr. Smith of California: Certainly.

Mr. James: It has always been the law, though, that the locator had to be in good faith and had taken the land for his own use.

Mr. Smith of California: Not necessarily for his own use in mining cases; they were always subject to conveyance before patent.

Mr. James: But I understand that must be the original purpose when he lays claim to the land.

Mr. Smith of California: Yes.

Mr. James: Now, under this bill which the gentleman has before the House these persons

who have gone and made these locations would be denied under the law a patent to land from the Government because they had deeded or contracted to deed that property to corporations. This would give the corporations the right, or rather the men the right, to have this land patented, which in effect would go into the hands of corporations.

Mr. Smith of California: No; it does not give the right to the corporations. I will ask the gentleman from Wyoming (Mr. Mondell) to explain this.

Mr. Mondell: I will say to the gentleman from Kentucky the mining laws are peculiar and differ from all other land laws of the United States in this, that the locator of a mining claim—not a coal claim, but a mining claim—has the right to transfer it at any time. He can agree to transfer even before he makes the location. The difficulty in these cases, however, is this: That the legal initiation of a mining claim depends upon a discovery of mineral, and in case the land contains oil or gas the oil or gas lies at such a depth that the discovery cannot ordinarily be made at the time the locator goes upon the land. It requires deep drilling to make the discovery. Now, if the discovery were made, the locator could transfer to a corporation, or various locators could form a corporation, and it would be entirely regular; but in the Yard decision, rendered a few days ago, the Department held if the transfer was made prior to the actual discovery it amounted to an abandonment, and that therefore even the locators themselves, though they still retained their interest, if that interest was in the form of an interest in a corporation could not obtain title to the land.

Now, ever since the placer law has been applied to oil and gas lands the Department has paid no attention to the question of when the discovery

was made, but in the recent Yard decision they said the discovery must be made prior to a transfer. The Department, however, saw that the effect of that decision would be to practically nullify a large number of locations that had been made, and so suggested that we provide that as to locations heretofore made they should be relieved from the effect of the Yard decision, and, if in all other respects the claim is regular, it should go to patent.

Mr. James: Will the gentleman yield?

Mr. Mondell: I will be glad to do so.

Mr. James: What corporation is this bill primarily introduced for?

Mr. Mondell: This is practically intended to relieve every oil locator in the United States. I have had some knowledge of the way in which oil locations are made, and I think there are very few cases where the original locators, all of them, as individuals, hold their rights as individuals at the time when the discovery is made, because even though all the original locators retain their interests, they ordinarily retain them in the form of a corporation, because the sinking of a well is a very expensive procedure, and the ordinary individual or co-partnership cannot raise the money to carry on the work.

Mr. Robinson: Will the gentleman yield?

Mr. Mondell: In just a moment. So it is intended to relieve the great majority of the oil and gas locators in the United States, and the Department was so impressed with the fact that this was practically the universal practice under the placer laws as related to oil and gas lands, that they recommended they be relieved.

Mr. James: If this law does become effective, the result will be that inasmuch as the Government heretofore provided a citizen could only take up 160 acres of land, it will practically

lodge into the hands of corporations many times 160 acres of land?

Mr. Mondell: I will say to the gentleman, it does not affect the mining law in any respect whatever, except that in passing upon the validity of claims the question as to when the discovery is made, whether it was made by the original locator or made by his grantees, shall not be raised, and it has never been raised in all the history of our Government until the Yard decision a few days ago.

Mr. Robinson: Will the gentleman from Wyoming yield to me to make a statement?

Mr. Mondell: I will be glad to yield to the gentleman to make a statement.

Mr. Smith of California: I will yield to the gentleman from Arkansas (Mr. Robinson) five minutes.

Mr. Robinson: Mr. Speaker, this measure has received very careful consideration by the Committee on the Public Lands. The situation existing in the oil-producing sections of the State of California, especially with regard to oil and gas lands, demands that some such legislation be enacted. The statutes that relate to oil and gas lands permit, briefly stating it, persons to enter 20 acres each, and as many as eight persons to combine their interests. The sole purpose of this bill is to give relief in a class of cases which, in my judgment, are meritorious. It developed in the very extensive hearings had by that committee that in the operations that have occurred, especially in the State of California, it has been necessary for persons to combine their interests, under the statute, in order that capital may be secured to prosecute discoveries and to operate with after discovery. The bill is intended to permit parties to secure patents where the transfers were made prior to discovery, the decision in the Yard case, which has been applied to oil and gas

lands by the Department of the Interior, holding that where the transfer was made before the discovery of oil only 20 acres should be patented. It does not in any other respect change the statute.

The hearings developed the fact that the conditions require that some speedy relief be granted, and I sincerely hope that the bill made be passed.

Mr. Martin of South Dakota: Are there conflicting claims to any portions of the land that would be affected by this legislation?

Mr. Robinson: Not that I know of.

Mr. Martin of South Dakota: Is any portion of these lands affected by the withdrawal of June, 1910, referred to in the report?

Mr. Robinson: The amendment which the committee adopts provides that such lands were not at the time of entry into possession covered by any withdrawal. This bill does not affect withdrawals.

Mr. Martin of South Dakota: Yes; but has the withdrawal been made since the transfer of the claim and before discovery?

Mr. Robinson: I did not hear distinctly the gentleman's question.

Mr. Martin of South Dakota: I am unable to quite understand the purpose of this legislation. For instance, a location, we will say, is transferred before the discovery is made. If the transferee proceeds and makes a discovery, there is a way for him to proceed.

Mr. Robinson: He could not get a patent under the decision in the Yard case for more than 20 acres. This will permit him to get a patent to 160 acres.

Mr. Martin of South Dakota: Yes; but the statute now permits a consolidation to be made to

an amount of 160 acres, but the departmental construction denies patent where the transfer was made before the discovery.

Mr. Martin of South Dakota: The purpose is to allow the transferee to obtain title to 160 acres, whereas the original locator, if it had been held in the hands of the original locator, could not obtain but 20 acres.

Mr. Robinson: They could obtain title to 160 acres, provided the discovery had been made before the consolidation.

Mr. Martin of South Dakota: But the discovery was made afterwards.

Mr. Robinson: Then they could only get 20 acres.

Mr. Foster of Illinois: Will the gentleman yield to me?

Mr. Robinson: Certainly.

Mr. Foster of Illinois: Why is it necessary to secure more than 20 acres?

Mr. Robinson: That is a pertinent question, and that was entered into fully in the hearings before the committee. It developed there, and, I think, to the satisfaction of everybody, that it was necessary in order to secure sufficient capital. The investment required for sinking oil wells in the California fields and for the operation of them is very large. It has been disclosed by the hearings that as much as half a million dollars in a single plant was in some instances invested before oil was found, and it is considered necessary, and, in fact, the statute recognizes it by permitting the consolidation of as many as eight entries, to combine the 20-acre holdings for operation.

Mr. Smith of California: I hope the gentleman on the other side will use a portion of his time.

Mr. Mann: I yield to the gentleman from Illinois (Mr. Foster) five minutes.

Mr. Foster of Illinois: Mr. Speaker, I would like to ask this question: The gentleman from Arkansas claims that it is necessary to have a larger amount than 20 acres of ground for oil purposes?

Mr. Robinson: That is the unanimous statement of men engaged in the operation of oil claims. I want to say that the law now in existence recognizes that fact, because it permits as many as eight separate claims to be consolidated. That is a distinct recognition of the fact. If they had made the discovery before the transfer, the patent would have been permitted, but since the discovery was not made before the transfer, the patent is not permitted to more than 20 acres, notwithstanding discoveries have since been made.

Mr. Foster of Illinois: Suppose eight men each have 20 acres of ground and there is oil under it, it is not necessary for those eight men to consolidate in order to lease or do the drilling. The fact is that ninety-nine out of every hundred, I might say, almost universally, men who own land that has oil under it do not develop that land themselves, but lease it to some company, who takes the contract and pays them a royalty. So I am unable to understand, under these conditions as they exist, wherever oil is found in the United States, why it is necessary that they should consolidate and have 160 acres, except that it gives some individuals more territory to drill on; not that they would use it themselves, but that each one of them leases to some party who does the developing.

Mr. Parsons: They have nothing to lease until they get a patent to it. This is to give them a patent.

Mr. Craig: Will the gentleman from Illinois yield?

Mr. Foster of Illinois: Yes.

Mr. Craig: The gentleman from Illinois assumes that there is oil on the 20 acres, but, as a matter of fact, the men who are affected by this legislation are mere prospectors. They do not know whether there is oil under the 20 acres or not, or whether there is oil under the 160 acres. They go and drill; they drill a hole here and a hole yonder, and spend perhaps $20,000 or $30,000 and get nothing, and under the law as it stands today they have no right to transfer—

Mr. Foster of Illinois: I would like to ask the gentleman this question: In case they find oil on the Government land, do they pay a royalty to the Government?

Mr. Craig: In case they find oil, they get their patent under the law, but nobody gets any rights under the mining law until the discovery is made, and the discovery of oil is not made until it comes up out of the ground.

Mr. Foster of Illinois: This proposition exists wherever you find oil, that a man goes out and leases land and takes his chances as to whether he finds oil or not, and if he finds oil, then his lease is worth something, but it is not worth a dollar until he does find it, if it is on private land. Now, I have seen a little something of this myself, and I know it is said here that men spend $20,000 or $30,000, but that does not make any difference, whether on Government or private land, because the same thing is done on private land in every oil field in the United States.

Mr. Parsons: Will the gentleman yield for a question?

Mr. Foster of Illinois: Yes.

Mr. Parsons: Has not the gentleman the situation in mind where the oil underlies private

land and in such cases cannot a corporation do the drilling so as to make the discovery?

Mr. Foster of Illinois: Well, they do it under the Government land in the same way.

Mr. Parsons: They do not; and that is just the difficulty.

Mr. Foster of Illinois: When they find the oil, then they get the patent.

Mr. Parsons: If you want to raise money and do it in the form of a corporation, you cannot do it now unless you pass this bill, because your chief expenditure is your initial expenditure of drilling your well.

Mr. Foster of Illinois: You would meet that difficulty any place, whether on public or private land.

Mr. Parsons: On private land people can combine in the form of a corporation and spend the money of the corporation in drilling the land, but as the law now is, under this provision referred to, that cannot be done on Government land.

The result is that lots of people, not knowing that that was the law because there had never been a ruling on it, as the papers did not show whether there had been a transfer before its discovery or not, and so this decision came only recently—lots of people who wished to discover oil and wished on Government land to make use of the means of raising money that they would in discovering oil on private land, after they made their locations by having a corporation drill and then discover oil, found that the law did not allow that. It is to allow them after they have made their locations to combine together and raise their money and make their discoveries.

Mr. Speaker: The time of the gentleman has expired.

Mr. Foster of Illinois: Does that apply to all lands?

Mr. Parsons: Government lands everywhere —California, Idaho, Wyoming, Oklahoma, Colorado—everywhere.

Mr. Mann: Mr. Speaker, I yield five minutes to the gentleman from Kentucky, Mr. James.

Mr. James: Mr. Speaker, my objection to this bill is simply this: The Congress of the United States has made certain laws relative to the patenting of coal and mineral lands. Now, it seems as if every time a corporation gets hold of some of this land and finds out that in order to make its title secure it has to violate the law; they come to Congress and tell us to repeal the law that they have to violate in order to get possession of the land that the ordinary fellow down in my country or anywhere else in the United States is denied the right to title by the Government for the very same reason that the corporation was denied the right and title to that land. The ordinary citizen bows obediently to the law; the corporation or syndicate says repeal it; get it out of the way.

The corporation goes and gets possession of land. They find out that in order to make their title secure they will have to remove a law made and passed by Congress which is in their way. Then they come to Congress and ask us to repeal the law. I believe that every law placed upon the statute books ought to stand there against every applicant, big and little, corporation or private individual, every man alike. Every man should stand upon the same footing; all should look alike and be treated alike.

Now, you take the Cunningham coal claims. There are many men who have gone to Alaska, some of them poor men. They have made claims there under the law. The law has denied those poor men the right to the land, but along comes

a mighty syndicate with millions like that back of the Cunningham claims, and it finds in its way the same law the poor man found in his way, but not like the poor man do they bow to it, but they come and ask us to repeal it, and let them get it out of their way so that they can get the land. (Applause.) I do not know anything particular about this bill here except what is shown by the report on it, but if the men who deeded this oil land to the corporation could not, as the Department said, deed something that they did not then own and did not know of this law and it denied to the ordinary man the right to a patent to that land, the same law denied this corporation the right to a patent to the land. If laws are bad ones, repeal them, so that all may benefit by the repeal, but do not enter into the practice of repealing laws for the favored ones.

Mr. Smith of California: Will the gentleman permit a question?

Mr. James: Yes.

Mr. Smith of California: Does the gentleman not know, as a matter of fact, 10, 12, or 15 years, the Government did not give a patent to these corporations and individuals who held guarantees before discovery, and that practice was universal?

Mr. James: The gentleman has asked me a question, and I will try to answer it. All I know is this, that we find the gentlemen who compose a corporation for whom this bill is primarily intended find a law standing in their way that prevents them from getting a title to the public land. That is the same law that applies to every individual in the United States, and I am opposed to making flesh of one and fowl of another. (Applause.) If you are going to make these laws liberal, so every man can get part of the spoils, then make it that way, but do not make it one way, and then when the poor man runs up on it

he has to lay down, and when the rich man or corporation runs up on it they proceed to ask Congress to repeal it.

Mr. Parsons: This is primarily on behalf of the poor man, because the poor men have to combine to get the money.

Mr. James: I doubt that exceedingly; but whatever the facts, I am opposing the repeal of law for some and the enforcement of it against others.

Mr. Mann: Mr. Speaker, I yield five minutes to the gentleman from Wisconsin (Mr. Lenroot).

Mr. Lenroot: Mr. Speaker, I would like to ask the gentleman from Wyoming one or two questions. The first is in regard to proposed amendment:

Provided, however, That such lands were not at the time of the entry into possession thereof covered by any withdrawal.

Mr. Mondell: It is not intended to grant this relief to anyone entering upon lands covered by withdrawals.

Mr. Lenroot: Does this clause enlarge the law in any respect?

Mr. Mondell: Well, I think it makes it better, because it makes it very plain that relief from the Yard decision shall not extend to anyone who went upon the lands while they were withdrawn.

Mr. Lenroot: I say to the gentleman: In the law we passed last year this provision is found:

> That the rights of any person who at the date of any order of withdrawal, heretofore or hereafter made, who is a *bona fide* occupant or claimant of oil or gas bearing lands, and who at such date is in diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as the occupant or claim-

ant shall continue in diligent prosecution of said work.

Now, it occurs to me that the last clause in this bill touching this matter may enlarge that somewhat.

Mr. Mondell: I will say to the gentleman the intent of it was not to enlarge it, if I understand what he means by enlargement, but to make it clear that this relief should not be granted to anyone who was on land when withdrawn. Now, there may be a question as to whether withdrawals of land prior to the passage of the so-called Pickett bill will be held by the courts to be valid, or if they were held to be invalid, still we insist that whether it be valid or not no one shall have the benefit of the law who was on the land when its withdrawal was made.

Mr. Lenroot: And so far as the law itself is concerned it is limited solely to the question of not refusing a patent because of the transfer.

Mr. Mondell: I understand, but we limit the relief from the effect of the Yard decision to those who went on land when there was no sort of withdrawal against it of any sort or kind, and the intent was to go further than we did in the Pickett bill, if possible, and to limit this right to those where there can be no question of good faith.

Mr. Lenroot: Is it not possible with this language the construction would be that where withdrawals have taken place and entries have been made, and the entrymen have not complied with the law, that they, too, will be given the benefit of this law?

Mr. Parsons: No; it is broader than that. The controversy in the committee, I will say, is this: This relief was sought on property of locators who had gone on oil lands after the Executive withdrawal and before we passed that act; but

the committee was unwilling that the act should give any relief to people who had gone on in the face of the Executive withdrawal, even though they claimed, and even though the law may say that the withdrawal was not legal, and we have thought it ought to be wiped out, and that is why the proviso was put on.

Mr. Lenroot: One other question. Under the mining laws it is necessary that the claimant initiate his entry in good faith? That question is suggested here.

Mr. Mondell: No, not as we understand it under the other land law. He discovers mineral, and it is his to do with as he sees fit. He can, in fact, make a contract before he locates his claim.

Mr. Lenroot: He can make his claim and immediately transfer, without any thought of making the discovery or working the claim himself, and it is perfectly lawful?

Mr. Mondell: Yes; that has always been the case under our mining laws.

Mr. Lenroot: I yield back the balance of my time.

The Speaker: The time of the gentleman has expired.

Mr. Smith of California: I yield two minutes to the gentleman from Alabama (Mr. Craig), a member of the committee.

Mr. Craig: Mr. Speaker, this bill endeavors to put the oil locator on practically the same footing that the gold locator now is; the difference between the two being that the gold locator makes his discovery in the first instance, while the oil locator often does large amounts of work without making any discovery at all. In other words, he hardly ever digs unless he finds something on top. If he finds even a little piece of gold his discovery is made, and he or his transferee can get a patent. The oil locator comes

along and prospects a piece of land. He has got to drill possibly 2,000 to 3,000 feet deep before he can discover anything whatever. He has no discovery on which to base his patent before doing the work, and sometimes not even after much work is done. Therefore, under the Yard decision, if he transfers to any person whomsoever, his transferee gets nothing. The Yard decision says that the transfer is equivalent to an abandonment of his claim. Then, if the transferee of the oil locator goes ahead and spends his money and makes a discovery, even then he cannot get a patent under the Yard decision. This bill is intended to relieve that situation.

Mr. Hardy: Can he lease it without forfeiting his claim?

Mr. Craig: There is no provision for leasing at all. He has no title unless he makes a discovery; he has no such interest as would give him a patent. As to the corporation that the gentleman from Kentucky (Mr. James) is so afraid of, I want to say that this bill is intended to relieve hundreds of individual locators, who, under the existing law, have combined their eight separate locations of 20 acres each into a 160-acre tract and are about to be deprived of their patents because of this Yard decision.

These individual locators had to combine, according to the testimony before the committee, in order to get credit upon which to operate their claims; and one of them stated to me that that credit had been withdrawn and that their locations were in jeopardy because they could not get the money upon which to operate; that the Yard decision had rendered their holdings so uncertain that the banks had lost faith in oil developments on Government lands in California, and many locators were absolutely in need of relief which this bill will provide.

The Speaker: The time of the gentleman has expired.

Mr. Smith of California: Mr. Speaker, I yield the balance of my time to my colleague from California (Mr. Needham).

Mr. Needham: Mr. Speaker, this legislation is requested by the oil operators in the West. For many years it has been the practice for eight individuals to go upon the public domain, each locate a claim of 20 acres, and then to form either a copartnership or a corporation, then each to deed his claim to such copartnership or corporation, and upon the discovery of oil on 20 acres to obtain patent to the whole 160 acres. Under that policy nearly 200 patents granting 160 acres each have been issued in the State of California alone. During the last year the Department decided that in such cases patent could only be issued to 20 acres, and as a result millions of dollars invested in oil in the West was jeopardized and investors refused to put more money into oil development, because it costs from $25,000 to $100,000 to make a discovery of oil by the sinking of wells. And the oil development of the West is waiting for the relief asked for in this bill. The oil people of California had a statewide mass meeting, and they sent to Washington a committee representing all those interested in the oil industry of California, and as a result the Committee on the Public Lands has unanimously reported this bill, which is now before the House of Representatives. Unless we get this relief the development of oil in the West must stop, because people will not invest from $25,000 to $100,000 to make a discovery of oil when it is only possible to obtain patent to 20 acres of land. This legislation simply carries out the policy which has been going on for years, and which oil operators and locators have relied upon in good faith, and is not in the interest, as the gentleman from Kentucky (Mr. James) seems to think, of corporations alone, but is in the interest of the locators, the individual miners as well,

and is demanded by all of the people of the West, and they are looking to us for this relief. And I say in all sincerity that this legislation ought to be passed without delay.

The Speaker: The question is on the motion to suspend the rules.

The question was taken; and two-thirds having voted in favor thereof, the amendment was agreed to, and the bill as amended was passed.

EXTRACT FROM VOL. 46, PART 4, PAGE 3410 (Senate Debate).

LOCATORS OF OIL AND GAS LANDS.

Mr. Flint: I ask unanimous consent for the present consideration of the bill (H. R. 32344) to protect the locators in good faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States, or their successors in interest.

The Secretary read the bill.

The Vice President: Is there objection to the present consideration of the bill?

Mr. Lodge: This seems to me an extremely important bill. I do not profess to understand it.

Mr. Flint: I can explain it to the Senator in a moment.

Mr. Lodge: It seems to involve the whole matter of oil and gas lands.

Mr. Flint: The Senator from Massachusetts is entirely mistaken. It does not involve anything of the kind. It is simply to correct a decision that has been rendered in reference to oil lands. The bill is recommended by the Department in that very decision, and this bill should pass. It is simply to make a correction.

The Vice President: Is there objection to the present consideration of the bill?

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Public Lands with an amendment, on page 2, line 3, to strike out "entry into possession thereof covered by any withdrawal" and to insert "inception of development on or under such claim withdrawn from mineral entry," so as to make the bill read:

> *Be it enacted, etc.,* That in no case shall patent be denied to or for any lands heretofore located or claimed under the mining laws of the United States containing petroleum, mineral oil, or gas solely because of any transfer or assignment thereof or of any interest or interests therein by the original locator or locators, or any of them, to any qualified person or persons, or corporation, prior to discovery of oil or gas therein, but if such claim is in all other respects valid and regular, patent therefor, not exceeding 160 acres in any one claim, shall issue to the holder or holders thereof, as in other cases: *Provided, however,* That such lands were not at the time of inception of development on or under such claim withdrawn from mineral entry.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

EXTRACT FROM VOL. 46, PART 4, PAGE 3618 (House debate on Senate Amendments).

LOCATION OF OIL AND GAS.

The Speaker also laid before the House the bill (H. R. 32344) to protect locators in good

faith of oil and gas lands who shall have effected an actual discovery of oil or gas on the public lands of the United States or their successors in interest, with Senate amendments.

The Senate amendments were read.

Mr. Needham: Mr. Speaker, I move that the House concur in the Senate amendments.

Mr. Fitzgerald: Mr. Speaker, I would like to ask what is the effect of these Senate amendments.

Mr. Needham: This bill, as it passed the House, excepted land under any withdrawal, and the Senate amendments confine the exception or proviso to mineral withdrawals. As the law is now, on land withdrawn like national forests you can carry on mining, and the bill as it passed the House would stop that. This amendment of the Senate is to correct that, and refers to mineral withdrawals so as to make the bill logical and as it was intended when it passed the House.

Mr. Fitzgerald: It does not affect lands withdrawn for other purposes?

Mr. Needham: This amendment was agreed to in the Committee on the Public Lands, and I was requested to make this motion on behalf of my colleague, Mr. Smith, of the Committee on the Public Lands, who has gone home quite ill.

The motion was agreed to.

Not only do the plain words of the statute and the debate in Congress negative the idea that it was intended that assignees of original locators upon withdrawn lands should be relieved from the diligence required by the Pickett Act, but both of these sources of interpretation must impel the conclusion that it was the intention that the Act should not apply to assignees who are applying for lands within

withdrawn areas. We submit that the Act and the debate show clearly that the North American Oil Consolidated can never acquire patent or any rights in the land it claims in this suit, because the record discloses that the lands were within a withdrawn area and conveyed to it prior to discovery. The proviso of the Act by no strained construction but by clear intendment excludes assignees from claiming lands within withdrawn areas, and that such was the intention of Congress was declared in no uncertain terms by Representative Mondell on the floor of the House when questioned as to its meaning. In response to the inquiry by Mr. Lenroot, who called attention to the provisions of the Pickett Act, the following colloquy occurred:

> "Mr. Mondell: I will say to the gentleman the intent of it was not to enlarge it, if I understand what he means by enlargement, but to make it clear that this relief should not be granted to anyone who was on land when withdrawn. Now, there may be a question as to whether withdrawals of land prior to the passage of the so-called Pickett bill will be held by the courts to be valid, or if they were held to be invalid, still we insist that whether it be valid or not no one shall have the benefit of the law who was on the land when its withdrawal was made.
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> "Mr. Lenroot: And so far as the law itself is concerned it is limited solely to the question of not refusing a patent because of the transfer.
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> "Mr. Mondell: I understand, but we limit the relief from the effect of the Yard decision to those who went on land when there was no sort of withdrawal against it of any sort or kind, and the intent was to go further than we did in the Pickett bill, if possible, and to limit this right to

those where there can be no question of good faith.

"Mr. Lenroot: Is it not possible with this language the construction would be that where withdrawals have taken place and entries have been made, and the entrymen have not complied with the law, that they, too, will be given the benefit of this law?

"Mr. Parsons: No; it is broader than that. The controversy in the committee, I will say, is this: This relief was sought on property of locators who had gone on oil lands after the Executive withdrawal and before we passed that act; but the committee was unwilling that the act should give any relief to people who had gone on in the face of the Executive withdrawal, even though they claimed, and even though the law may say that the withdrawal was not legal, and we have thought it ought to be wiped out, and that is why the proviso was put on."

If this Court will resort to the language just quoted in order to determine what was the intent of Congress, we submit that the language of this proviso excludes from the benefit of the Act of March 2, 1911, all persons who are claiming rights by reason of assignments prior to discovery unless it is shown that such assignments were made and the parties claiming patent were in possession and had started their development work prior to the date of withdrawal, to-wit, September 27, 1909. The record in this case (Cause No. 2789, page 21) discloses that the North American Oil Consolidated acquired no rights whatever in the land in controversy until July 14, 1913.

That it was not the intention of Congress to repeal the provisions of the Pickett Act requiring the continued diligence of work leading to the discovery of oil is further evidenced by the fact that on August 24, 1912, the Pickett Act of June 25, 1910, was amended as follows:

> "An Act to amend section two of an act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten.
>
> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section two of the act of Congress approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:
>
> " 'Sec. 2. That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals:
>
> "*Provided,* That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a *bona fide* occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: *Provided further,* That this act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands

made prior to June twenty-fifth, nineteen hundren and ten: *And provided further,* That there shall be excepted from the force and effect of any withdrawal made under the provisions of this act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further,* That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by act of Congress.' ''

It will be noted that the provisions of the Pickett Act were changed by striking out the words "so far as the same applied to minerals other than coal, oil, gas, and phosphates," and by inserting in lieu thereof the words "metalliferous minerals"; by adding the word "the" between the words "in" and "diligent"; by adding the word "the" between the words "to" and "discovery"; by striking out the words "the passage of this act" and inserting in lieu thereof "June twenty-fifth, nineteen hundred and ten"; and by inserting the name "California" in the last proviso. It is therefore very evident that Congress did not intend by the Act of March 2, 1911, to relieve any claimants of the diligence required by the Pickett Act.

We therefore insist that the decree of the Court below should be affirmed.

Respectfully submitted,

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Attorneys for Appellee.